

MARCO MONTGOMERY
Claimant

BENTLEY TRIM COMPANY
Respondent

TRAVELERS INDEMNITY COMPANY
Insurance Carrier

ORDER

ISSUES

- (1) Did claimant sustain personal injury by accident which arose out of and in the course of employment?
- (2) Did claimant provide respondent with timely notice of accident?
- (3) Was claimant an employee or independent contractor of respondent on the date of accident?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, for preliminary hearing purposes the Appeals Board finds as follows:

The preliminary hearing Order should be affirmed.

Claimant contends he injured his left shoulder and began experiencing left-upper extremity symptoms while working for the respondent on or about September 23, 1996. He also contends he reported the accident to Jerry Bentley, respondent's owner, immediately after he began to experience symptoms. Respondent denies claimant was its employee, denies claimant sustained personal injury by accident arising out of and in the course of employment, and denies claimant provided timely notice of accident.

The Appeals Board finds claimant injured his left shoulder on or about September 23, 1996, while working as a trim carpenter for the respondent. The Appeals Board also finds claimant advised respondent's owner, Jerry Bentley, of the accident shortly after it occurred and well within ten days of its occurrence. Those conclusions are based upon claimant's credible testimony regarding his work activities when he began to experience symptoms and his prompt report to Mr. Bentley. Therefore, claimant has established he sustained personal injury by accident arising out of and in the course of employment with respondent and also timely notice of accident as required by K.S.A. 44-520.

The Appeals Board also finds claimant was respondent's employee on the date of accident for purposes of the Workers Compensation Act. That conclusion is supported by the findings respondent provided claimant with the materials to perform his job, scheduled claimant's work activities, retained the right to control claimant's work activities and the right of termination.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the preliminary hearing Order dated March 12, 1997, entered by Administrative Law Judge Steven J. Howard should be, and hereby is, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 1997.

BOARD MEMBER

c: Robert W. Harris, Kansas City, KS
Bryce Moore, Overland Park, KS
Steven J. Howard, Administrative Law Judge
Philip S. Harness, Director